

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TOMAC OF FLORIDA, INC.,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. H-09-365
	§	
SEYR, INC., <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER

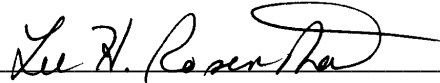
On June 12, 2009, the parties filed a joint motion to stay this case until the parties had mediated their dispute. This court granted the motion on June 16, 2009. No deadline was set for the mediation.

It appears from the record that on August 10, 2009, the parties agreed to mediation on October 7, 12, or 13. Despite this agreement, however, on August 19, 2009, the plaintiff filed a motion to compel the parties to arbitrate under a mandatory arbitration clause contained in a written agreement. (Docket Entry No. 9). The plaintiff justified the motion – which would require this court to lift the stay – by the parties’ inability to agree on a mediation date. (*Id.*). The defendant, Helen King, opposed the motion to compel, pointing out that the parties had in fact agreed on a mediation date a week before the motion to compel was filed. The opposition also argued that the entity that may be a party to the arbitration agreement the plaintiff relied on has not been named or served in this suit. (Docket Entry No. 10). In response, the plaintiff argued that the other defendants are before this court. (Docket Entry No. 11).

Based on the motion, response, and reply and the record, the motion to compel arbitration is denied, without prejudice. The parties asked this court to stay this case to permit mediation to occur. The parties then reached agreement on dates for that mediation. The reason given for asking this court to compel arbitration – the parties’ failure to agree on dates – is contradicted by the parties’ correspondence submitted to this court. And the present record is simply inadequate for this court to compel arbitration as the plaintiff requests.

The motion to compel arbitration is denied. Mediation must occur no later than **November 30, 2009**. A hearing is set for **December 7, 2009, at 8:30 a.m.** in Courtroom 11B in the event the case does not settle at mediation.

SIGNED on October 7, 2009, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge